

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33516  
Docket No. MW-32467  
99-3-95-3-281**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(Soo Line Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it assigned an outside concern (Century Fence Company) to perform the routine B&B maintenance work of repairing the Carrier’s fence at the Shoreham Intermodal Yard beginning September 6 through September 24, 1993 (System File R734/8-00156).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Rule 1.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman R. A. Palmer, Assistant Foremen W. Nichols and V. Kostrzewski, Carpenters H. R. John, E. J. Dunn, R. S. Johnson and D. D. Frojen shall each be allowed pay at their respective straight time rates for an equal proportionate share of the one hundred twenty-four (124) man-hours expended by the outside forces in the performance of the above-described work and all overtime, vacation and fringe benefits lost.”**

**FINDINGS:**

**The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

None of the relevant facts is in dispute. The Carrier's main gate and fencing at its Shoreham Intermodal Facility were severely damaged by an accident occurring August 6, 1993. Due to serious security concerns, the Carrier immediately contacted Century Fence Company for replacement parts and the work was completed by September 24, 1993.

The Organization alleges violation of the Scope of the Agreement and the failure of the Carrier to provide Notice of Intent. It argues that the repair was not an emergency. It maintains that there was a delay in repair due to awaiting a needed part, but that the work performed was similar to prior performed work, required no special skills, and was customarily and traditionally performed by the employees. The Organization notes that it had a crane available near the site and had similarly repaired the same fence on the gate at another point at the Intermodal Facility. It contends that the use of outside forces violated the Agreement.

The Carrier denies all of the Organization's assertions. It maintains that this was work neither exclusively, nor traditionally and customarily performed by the employees. It was therefore not obligated to serve any notice of the work performed by the outside contractor. Although the Carrier admits that the employees have previously performed such work, it maintains that prior work was relegated to minor repairs. It further argues that the same contractor previously installed the fence in 1989, and made several fence repairs, including in 1991 and 1993. It also maintains that the work performed was the result of a major accident to the fence and an emergency, not preplanned for subcontracting.

There is proof in the record that Maintenance of Way forces have previously performed fence repair. However, the proof indicates ten dates in 1993 and 1994 which never exceeded eight hours on any date. The Carrier also provided evidence that this

work involved 124 hours, due to extensive damage. There is no evidence that the employees' prior work was equivalent in action or complexity to the work herein disputed. The Organization provided insufficient proof that by history and custom this work belonged to the employees. On the contrary, the Carrier documented several instances where outside contractors had performed the work. As for notification prior to contracting out, the Carrier's evidence is that they used the same company on the fence in 1991 and the Board finds no prior question of Notice herein.

On the basis of this full record, the Board finds insufficient proof that the work performed was exactly the same or even similar to that previously performed by the employees. The Board also concludes that similar work to this dispute had been previously performed by others, including this same outside contractor without objection. The evidence supports a mixed practice on this property with regard to the security fence work without prior notice, providing no proof that the Carrier's actions should herein be considered a violation of the Agreement (Third Division Awards 30688, 30941, 32351).

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 22nd day of September 1999.**